

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

SEP 8 1992

OFFICE OF
MANAGING DIRECTOR

ORIGINAL
FILE

George L. Lyon., Jr., Esquire
Lukas, McGowan, Nace & Gutierrez
1819 H Street, N.W.
Seventh Floor
Washington, D.C. 20006

Dear Mr. Lyon:

This is in response to your request for refund of the hearing fee submitted by Beckwith Communications, Inc. (Beckwith), former applicant for a new FM station at Healdsburg, California.

Beckwith's application was dismissed by the presiding Administrative Law Judge in the comparative proceeding to select the licensee at Healdsburg when it failed to file a Notice of Appearance.

Section 1.1111(b)(2) of the Commission's rules provides that a hearing fee will be returned whenever an application is dismissed for failure to file a Notice of Appearance. 47 C.F.R. § 1.1111(b)(2).

Accordingly, a check for \$6,760.00, payable to the original maker of the check, will be forwarded to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

9107178170290009

Jim

LUKAS, MCGOWAN, NACE & GUTIERREZ

CHARTERED

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August 4, 1992

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Andrew S. Fishel
Managing Director
Federal Communications Commission
1919 M Street, N.W., Room 852
Washington, D. C. 20036

Dear Mr. Fishel:

Beckwith Communications, Inc., ("Beckwith") applicant for a new FM broadcast station on Channel 240A at Healdsburg, California, File No. BPH-900211MI, through counsel, requests refund of the \$6,760 hearing fee paid the Commission on July 15, 1991. See Attachment 1. In support of its request, Beckwith submits the following.

Section 1.1111(b)(2) of the Commission's rules provides that the hearing fee will be refunded to the applicant when its application is dismissed voluntarily or involuntarily for failure to file a Notice of Appearance.

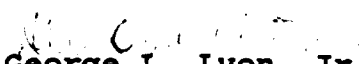
On June 4, 1992, Beckwith notified the Commission that it would not be filing a notice of Appearance in this proceeding. By order of the Presiding Judge (FCC 92M-782, released July 16, 1992), copy attached, Beckwith's application was dismissed for failure to appear and prosecute. Accordingly, Beckwith is entitled to a refund of the hearing fee pursuant to Rule Section 1.1111(c)(2).

It is therefore respectfully requested that \$6,760 (Six Thousand Seven Hundred Sixty Dollars) be refunded to the applicant at the earliest possible time.

Andrew S. Fishel, Managing Director
Federal Communications Commission
August 4, 1992
Page 2

Should questions arise in connection with this matter,
please contact this office.

Very truly yours,


George L. Lyon, Jr.
Marjorie K. Conner

Attachment

cc: Roy J. Stewart

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FCC 92M-782
03547

In re Applications of)	MM DOCKET NO. 92-111
)	
DEAS COMMUNICATIONS, INC.)	File No. BPH-910208MB
)	
DRAGONFLY COMMUNICATIONS, INC.)	File No. BPH-910211MA
)	
HEALDSBURG BROADCASTING, INC.)	File No. BPH-910211MB
)	
BECKWITH COMMUNICATIONS, INC.)	File No. BPH-910211MI
)	
DESERT ROCK LIMITED PARTNERSHIP)	File No. BPH-910211ML
)	
HEALDSBURG EMPIRE CORPORATION)	File No. BPH-910212MM
)	
For Construction Permit for a)	
New FM Station on Channel 240A)	
in Healdsburg, California)	

MEMORANDUM OPINION AND ORDER

Issued: July 14, 1992; Released: July 16, 1992

1. Under consideration are Motion to Dismiss, filed June 9, 1992 by Desert Rock Limited Partnership; Petition for Leave to Amend, filed June 11, 1992 by Healdsburg Broadcasting, Inc.; Petition for Leave to Amend, filed June 19, 1992 by Healdsburg Empire Corporation; Petition for Leave to Amend, filed June 19, 1992 by Healdsburg Broadcasting, Inc.; Motion for Leave to File Information for the Record, filed June 19, 1992 by Healdsburg Empire Corporation; and Petition to Enlarge Issues, filed June 19, 1992 by Healdsburg Broadcasting, Inc.

Desert Rock's Motion to Dismiss

2. Desert Rock moves to dismiss its application. In addition, Dragonfly and Beckwith have not filed notices of appearance or standard integration statements and their applications will be dismissed for failure to prosecute. Desert Rock, Dragonfly and Beckwith's applications will be dismissed with prejudice.

HBI's June 11 and 19, 1992 Amendments

3. HBI petitions for leave to amend to provide engineering for the problems that existed with its proposed antenna height and contours. The Bureau stated in the HDO that unless HBI corrected its contour overlap problem, its application would be dismissed. The Bureau has found that this amendment does not cure the defects and violates §73.316(b)(2). The Bureau points out that HBI's directional antenna radiation pattern varies more than 2 dB per 10 degrees of azimuth and is not acceptable for filing and for that reason HBI's application should be dismissed. HBI's petition for leave to amend will be denied and HBI will have 5 days from release of this order, until July 22, 1992, to show cause why its application should not be dismissed.

4. HBI also petitions for leave to amend to report new addresses for its owners and a new media interest. The petition will be granted and the amendment accepted.

Empire's June 19, 1992 Amendment

5. Empire petitions for leave to amend to provide an RF radiation showing and to submit EEO information called for in the application. The petition will be granted and the amendment accepted. The Chief, Audio Services Division has requested, after reviewing Empire's environmental showing, that the contingent environmental issue specified against Empire should be eliminated. The Bureau's request will be granted.

Empire's Motion to File Information

6. Empire requests leave to file information about Deas Communications' principal Edgar Deas. Deas points out that the information proffered by Empire was filed when these applications were pending before the Bureau and considered by the Bureau at n.4 of the HDO. Because the information is irrelevant and already part of the docket, Empire's motion will be denied.

HBI's Petition to Enlarge Issues Against Deas

7. HBI petitions to enlarge issues against Deas to determine whether Deas has reasonable assurance for its proposed antenna site. Deas responds that the issue was previously raised, considered in the HDO and denied. HBI contends that its filing contained additional information. The additional information pointed to by HBI is not materially different from that considered in the HDO. The petition to enlarge will be denied.

ACCORDINGLY, IT IS ORDERED that the motion to dismiss, filed June 9, 1992 by Desert Rock Limited Partnership (File No. BPH-910211ML) IS GRANTED and Desert Rock's application IS DISMISSED WITH PREJUDICE and IS DELETED from the caption.

IT IS FURTHER ORDERED that the applications of Dragonfly Communications, Inc. (File No. BPH-910211MA) and Beckwith Communications, Inc. (File No. BPH-910211MI) ARE DISMISSED WITH PREJUDICE and ARE DELETED from the caption.

IT IS FURTHER ORDERED that the petition for leave to amend, filed June 19, 1992 by Healdsburg Broadcasting, Inc. IS DENIED, the amendment IS REJECTED, and HBI has until July 22, 1992 to show cause why its application should not be dismissed.

IT IS FURTHER ORDERED that the petition for leave to amend, filed June 11, 1992 by Healdsburg Broadcasting, Inc. IS GRANTED and the amendment IS ACCEPTED.


IT IS FURTHER ORDERED that the petition for leave to amend, filed June 19, 1992 by Healdsburg Empire Corporation IS GRANTED and the amendment IS ACCEPTED.

IT IS FURTHER ORDERED that Issue 2 as it applies to Healdsburg Empire Corporation IS ELIMINATED.

IT IS FURTHER ORDERED that the motion for leave to file information for the record, filed June 19, 1992 by Healdsburg Empire Corporation IS DENIED and the information IS REJECTED.

IT IS FURTHER ORDERED that the petition to enlarge issues, filed June 19, 1992 by Healdsburg Broadcasting, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION


Edward J. Kuhmann
Administrative Law Judge